

G. R. S. IX-5]

Previous references.

1914-15
~~1914-15~~
(Court)

File No. 213-14

Serial Nos. 1

Later references.

Preserve
3/17

GENERAL AND REVENUE SECRETARIAT.

Serial No. 1

Part B for

December 16

SUBJECT.

Steps for satisfactory service of process.
(Resolution No. 18 of the
Judicial Conference.)

1) To, The Registrar Chief Court
The Secy. Judl. Conference.

J No 2206-7 of 20-12-14.

States that Govt. agree with the Chief Court
who were consulted in the matter and
that they are of opinion that no further
steps need at present be taken—

Majanasundam
26/3/17

GENERAL AND REVENUE SECRETARIAT.

(*Courts*)

NOTES.

File No. 213-14

. FILE HEADING.

Steps for satisfactory service of Process.
(Resolution no 18 of the
Judicial Conference)

From

No.		Dated		Received	
Diary No.	}	Enclos.	Spare Copies.	}	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

P.T.O.

Serial
No.

18. That the working of the process department is unsatisfactory and that steps should be taken to enforce more satisfactory service by the adoption of disciplinary measures.

1) Forwarded unofficially to the Registrar, Chief Court of Mysore, for favour of obtaining the opinion of the judges of the Chief Court on the above resolution of the judicial conference of 1914.

By order
B. Srinivasan
for offg. Secy to Govt.

15th January 1915

2) Please turn over for the opinions of the judges.

CHIEF COURT OF MYSORE,
BANGALORE.Dated 14th August 1916.OPINION OF THE CHIEF COURT.

It may be taken that the working of the Process Department is like other departments of the administration not wholly satisfactory, though the Judges are inclined to agree with those officers who consider that there is a tendency to exaggerate its defects.

There is nothing in the reference to shew in what respects those who made the representation deemed that there is ground for dissatisfaction, but the judges believe that delay in the service of summonses and the execution of warrants, failure to serve summonses personally and to execute warrants of arrest and occasionally of attachment and falsification of returns, are the principal offences that can be charged against the establishment.

As regards delays, the judges think that these are by no means all due to the process servers and amins. An inspection of process departments in different courts shews that as a rule processes are returned to the court within the time fixed by the Process Nazir or the judge. The delay is more often in issuing the process than in returning it: in fact process servers are perhaps apt to return their summonses too soon in cases where a little further effort involving a little further retention of the summons or warrant might result in a successful service or execution. Delays in the office are either with the
process

process writing staff or with the Process Nazir; and inspection of courts does not lead to the conclusion that they are generally the fault of the staff. There may be occasionally some unnecessary delay in preparing processes for despatch to the Process Nazir, but there is no systematic or general delay such as would justify the indictment of the whole department on this charge. There are smart and there are lethargic, quick and slow, clerks in the munsiff's courts as elsewhere. Delays by the Process Nazir in issuing processes sent to him are perhaps more frequent, but they are very often not the fault of the Process Nazir. The fault is rather with the numerical insufficiency of the process servers and amins: processes have to be collected until there is a number which can be entrusted to a single server going out in a particular direction: they cannot be handed out as soon as they come in or there would soon be no process servers left at headquarters.

It is believed that hearings as a rule are not delayed for want of return of processes in time, but no doubt the deficiency of staff renders it necessary to allow longer adjournments than would be required if every summons could be sent out by a different process server.

So far as delays are concerned parties do not give assistance to the courts: in many cases the delay is due to non-payment of process fees in proper time. That is often caused no doubt by the difficulty of raising money, and is not to be accounted a default. After all, the courts are the

servants

servants of litigants and, so long as their process is not abused by one ~~/~~ litigant to the harassment of his adversary, need not be concerned if cases before them are delayed from causes unconnected with their own establishments. Parties have no guarantee that cases will be taken up on the date fixed for hearing and cannot possibly have such a guarantee. Courts do their best to arrange their ~~ew~~ work so as to give the minimum of inconvenience to parties, but obviously they must, if they are not to run the risk of wasting much time and if they are to keep down their files, post for hearing more cases on many days than they are likely to get through in the day. This creates a vicious circle: the party thinks he need not hurry about his processes because the case may very likely not come on and he can get an adjournment, if he likes, or will, if his witnesses appear, have to pay them ~~batta~~ for coming again; and the court in order to get its full day's work has to post more cases than it can try, knowing that there is sure to be default in some of them.

The rules of the department are, it is believed, sufficient and adequate to prevent avoidable delays: their working is in the hands of the judges of the courts and the practitioners before them, and while it cannot be said that there are no unnecessary adjournments, no judges who are not rather too ready to adjourn a heavy case on small excuse, or occasionally too prone to consult their own convenience or that of practitioners rather than the ~~interests~~ interests of parties, these are defects which do not admit of any general remedy by rule, and are moreover not the defects to which the representation under consideration is directed.

(6)

The causes of failure to serve and execute processes are many: process servers are not highly paid and not likely to be very anxious to hunt out a party or witness if they have a reasonable excuse for returning the process unserved or unexecuted. In the case of warrants of arrest, the judgment-debtor may frequently be able to buy his liberty for a time: the agents of decree-holders do not always give the assistance which it is their duty to give, and themselves are not always faithful to their masters: parties frequently find ~~it~~ it difficult or at any rate troublesome to furnish correct addresses for the service of their witnesses, and do not help the process servers to locate or follow up a witness or judgment-debtor who is not found at ~~his~~ home at the first attempt: process servers ^{have} ~~are~~ to return processes within a fixed time, and have too many services to effect to allow of their following up the tracks of any single individual from place to place; parties cannot be expected always to send a man to help when they do not and cannot themselves arrange for the process server (who has a batch of processes of different parties to serve in different places) to be at the place where their witnesses are to be served at a time when they can give him help. Defendants and witnesses anxious to put off the evil day, can in these circumstances generally manage to evade service for a time, and in the absence of any representative of the plaintiff with the process server, can no doubt often secure a false return by a small payment.

The remedies for these defects would seem to be not so much disciplinary measures as suggested

67

in the representation, as an improvement in the pay and prospects of the staff and an increase in their number. It is not necessary at present to examine the question in detail from a financial point of view, but if the Government is prepared to spend on the process establishment all that is collected in process fees, some improvement in this direction could no doubt be effected. The Judges think that better Process Nazirs and ^ebetter and more amins are wanted.

Disciplinary measures are useful of course, and steps are taken in most courts in this direction. It is easy to criticize and to demand 'careful supervision' by head ministerial officers and judges of courts, but in most cases these officials cannot spare much more time than they do for that kind of work and in some no doubt they do not quite understand the best and most economical way of setting about the work of supervision.

Punishment must of course be inflicted for neglect of duty but it is hardly necessary to devise new punishments. The courts are already armed with powers of punishment, and use them. The District Judge of Bangalore advocates severe punishment such as suspension or dismissal for continued bad work, and has a register which he calls his black book in which black marks are awarded to servers who fail to shew a normal proportion of good services. This, if regularly and properly worked, may afford a good means of weeding out useless hands and stimulating others to better work and the First Munsiff of Bangalore notes an improvement as due to it.

The District Judge of Mysore recommends that good conduct allowances be given to satisfactory servants as is done in the police ^dDepartment, and in view of the fact that process servers and amins cannot in general expect to get into higher posts, it seems likely that this ~~X~~ scheme may, if adopted, have some effect in popularizing the department. The financial aspect will be considered and a separate communication made, should the Judges think the scheme is practicable.

The District Judge of Shimoga and some others advocate promotion by selection; but this is no new suggestion; and it is necessary that it should be carefully worked or it may do more harm by discouraging worthy but inconspicuous servants, than good by encouraging their more brilliant fellow workers: it is apt to lead to favouritism, backbiting, and discontent among the seniors.

The same District Judge and several other officers propose an improvement in the pay of the process Nazir and the fixing of some qualification for the appointment. If the pay is improved, better educational qualifications can be required but what is wanted in a process Nazir is method, honesty and capacity for dealing with his staff, rather than any high degree of education. He must of course be able to keep accounts of a simple ~~A~~ kind and be a strict disciplinarian, not as so many Nazirs are, frightened of his process servers. The pay has been improved lately though probably it still requires improvement and judges may be left to get the best men they can as vacancies arise.

The Subordinate Judge of Mysore (Mr. B. Subbanna) and some other officers suggest rewards of different kinds: and one suggestion is a reward according to the number of personal services effected: this might be earned by good luck and lost by bad luck in many cases, but would probably be a useful stimulus if a practical scheme can be evolved for its application. Extra pay after a period of good service and progressive pay are also suggested as also personal allowance to be granted for good work and discontinued when the work falls off. The difficulty in these cases is to evolve a practical scheme ~~an~~ which shall be just and ~~is~~ not too expensive: the minimum pay cannot be reduced and the extra allowances that can be given may not be large enough to be a ^{great} stimulus to exertion: moreover they could not perhaps be awarded at discretion, and it would be difficult to frame satisfactory rules. However, an effort can be made if the Government is prepared to incur some expense.

Greater co-operation of parties is said by many officers to be necessary though one Munsiff thinks that as long as parties have anything to do with the process staff little improvement can be expected. One Munsiff takes the initials of pleaders on processes before they are issued and this doubtless gives the party an ~~app~~ opportunity to help the process server; provided the notices are issued from the court regularly.

Co-operation of parties can be secured by the Court only by consulting their convenience^c and

and by refusing to condone delay or default in cases ~~where~~ where co-operation is shewn to have been necessary and possible and when it would, if given, have prevented the delay or default. They cannot order parties to accompany process servers on pain of dismissal of their suits or defences.

Punishment to be awarded if satisfactory service falls below a certain proportion ^{or reward if it exceeds a certain proportion} of cases in which processes are issued are suggested by some officers and these may be useful remedies if they are practicable, but would be difficult to work satisfactorily if the proportion is calculated over short periods: one quarter's work at least would have to be taken as the unit for calculation but judges can do this sort of things now without rule, as the District Judge of Bangalore does with his black book. They cannot of course give rewards and probably rewards are more stimulating than punishments. One officer suggests a monthly competition for a prize to the best amin or process server. The period suggested is too short but an annual distribution of small rewards might be of some use - one or two to each court.

Another suggestion is a uniform for the process staff: but whether this would be of much use is doubtful: it would be expensive.

A horse for each amin is also suggested. It would be cheaper to increase the number ofamins but the idea is to give him some extra importance - "prestige" - but this would hardly compensate him for the extra expense entailed by having to keep a horse. The Government would have to give a horse allowance

allowance or extra pay and this seems hardly likely to be ~~was~~ worth while.

Some officers suggest that fresh burdens of responsibility be thrown on the patels and shanbhogues, and even, that processes be served through village officers. The patel may doubtless be required to help when he can, but to make him a servant of the civil court is impracticable. But when there is a village civil court, it may be practicable to call on the presiding village Munsiff to help process servers or even, if he has a ~~staff~~ staff, to serve processes. Further consideration will be given to this point but at present the number of village courts is too small for this to effect any marked improvement.

Another suggestion is to prescribe a diary for process servers. The present 'ticket' is intended to be taken by the process server on his rounds and with a little amplification might be ^aadopted as a diary. The idea is a good one and if the village ~~ex~~ patel or shanbhogue can be required to initial and date it, the diary might be of considerable use as a check on idleness or malpractices. On this point too, enquiry will be made.

Payment of witness batta in court as in criminal cases is a suggestion which has been made in Madras to simplify accounts, but which seems to be made in this connection to prevent embezzlement, and is said by the suggester (Mr. Srikantesa Gowda) to be the only way of checking corruption. It certainly would not save delays, for witnesses would constantly decline to come without payment

and

(12)

and to compel them to do so might be oppressive.

Another idea intended to prevent delay is to have process servers quartered at different places and summonses sent there to them for service and return by post: apart from the expense of sending money by post, there would be great difficulties about discipline and control.

A bold suggestion is that process servers should be paid by the piece: but the most arduous attempt to execute a warrant may be ineffectual, and unless process servers are to be mere casual coolies, they must have a minimum pay as a retainer. The suggestion was referred to mofussil judges but has not met with a favourable reception and the Chief Court thinks the objections to it outweigh its advantages.

Periodical transfer of amins and process servers is advocated by a few officers. Frequent transfers are hard on low paid servants and an amin and process server should have an intimate knowledge of the country and villagers. Transfer of Process Nazirs might be effected periodically with advantage perhaps, and this can be effected by District Judges within their divisions under the present rules regulating appointments in civil courts.

Mr. Virabasaviah proposes to have different scales of pay for different methods of service. This is much like the piece work suggestion but would be very difficult to work satisfactorily.

As regards false returns and corruption generally, the judges believe that nothing will stop that

that when it is prevalent, but the devising of checks, severe punishments when cases are detected and improvement in the position of the officials, so as to make their posts worth keeping.

M. Sopalunger

REGISTRAR.

18/11/13

P.T.O.

of 1914.

3)

Subd for orders.

17.8.11)

get

4) Please put up draft on the following lines: - Government agree with the Chief Comr. who were consulted in the matter in considering that there is a tendency to exaggerate the defects of the working of the Dept. The delays in the Service of or failure to serve summons ~~and~~ ^{are} due to various causes, and they are by no means due to the process servers and clerks.

The ~~united~~ so far ~~anti~~ ~~def~~ ~~ing~~ and due
to the provisions, and annis, disciplinary
measures are taken in all the Combs, ~~and~~
Remedies in this way of compressing the pay and
profits of the staff have already been adopted
The pay and profits of the staff have recently
been improved as a further remedy.

Es 100

3)

Submitted with a dub.

23.8.16.
NPK

6) Mayor approved
Eugene

Second Member

I have revised the draft
in certain respects // The grant of Pellwar
of good conduct allowances & other ~~allowances~~

Q. o pulch-
Hag D+

DT
 dt 2823 cto 267
 19/18 DT 30-3-19

$$\frac{6987}{23.8}$$

8.C 18

15

G. R. S. 12]

General and Revenue
Secretariat.

cto File No. 213 of 1914

Serial
No.

An incentive to increased output is
a good idea, & proposals may be
invited.

8) The whole opinion is informing, &
deserves personal -

9) The draft may be finalised, &
sent to the Secy also -

[Signature]

10) Type ^{done} 24/11
24/11

11) Typed draft put up

26.8.16
9241

12) Informing Secy's

approval 13) have made a small note on the margin
of the draft

26/11

Secy
dcau

26/11
26/11

14/11
11.9.16

14) This may perhaps be kindly examined by the
present First Member also.

18.11.16 *[Signature]* done: 26.11

26/11

6.9.8
20/11

First Member

15) I have seen the
papers. The present draft seems
to be all right. If we want to

[Signature]

Serial
No.

improve the present system at once
it will be doubt mean some
extra cost which cannot be helped in
the interests of the improvement
proposed to be effected - the N. Govt -
may be considered as a proper & an
good thing - & the file is recommended
to me

7/12 No. 1082-16

F. L. G.)

21/11

well

Done
2/11
8/11

16) I think there is nothing extraordinary
or risky in process being work to justify
a system of rewards, good conduct allowances.
These are given in very special departments
when on occasions extraordinary courage, skill &c
are reqd.

M.
3/12

5/12

Por (11)

17) Subd with reference to para 15 supra

4/11/16
M.

8/11

987
7.12

First Member

18) In view of the financial
position, I am inclined to adopt an
annual draft ^{but it keeps it} ~~which~~ was raised & in late

Recd
7/12/16
7/12

General and Revenue
Secretariat.

Cts File No. 213 of 1914

Serial
No.Learn Member - Put up a tidy
draft - accordingly.8/12 ^{Wey}
Eg
8/12

1) Submitted with a tidy draft as directed.

MBC
14.12.16
MBCEg
15/12

Dist. Member)

2) Draft approved by the Dist. Member.

M
18/12/16 ref 18/12/16

2) Done 18/12/16

1 To The Registrar Chief Court
The Secy Judl Com Secy

no 2206-7

20th Dec 16

States that Govt agree with the Ch.
Court who were consulted in the matter
and that they are of opinion that no
further steps need at present be
taken

✓ Tidy draft.
G.R.S. 28] 19/12

Passing orders on Judicial
Conference Subject No. 18 of 1914.
(18)

Cit

Courts File No. 213-14.
Serial No. /

Diary No. of letter replied to _____

GENERAL AND REVENUE
SECRETARIAT.
()

, the 191 .

Date of issue. 20th Dec 1916.

Signed by Mr. G. Srinivasan Iyer

Proceedings of the Government of His Highness
the Maharaja of Mysore

READ The following Resolution No. 18 of
the Judicial Conference 1914.

"That the working of the process
department is unsatisfactory & that steps
should be taken to enforce more satisfac-

ORDER THEREON. No.

tory Service by the adoption of disci-
plinary measures."

Order No. 92206-7 Dated 20.12.16

Government agree with the

over

SUBJECT.

88/3
Eh

19

Chief Court who were consulted in the matter in considering that there is a tendency to exaggerate the defects of the working of the department. The delays in the service of, or failure to serve, summonses, are due to various causes, and they are by no means all due to the process servers and aminas. In so far as they are due to the process servers & aminas, disciplinary measures are, it is believed, taken in all the Courts. Further, the pay & prospects of the Process Establishment of Civil Courts have recently been improved by Government in their Order No. J. 2823-6/Cts. 267-11-5 dated 30th March 1914, with a view to secure increased efficiency of this establishment. Government are therefore of opinion that no further steps need at present be taken in the matter.

La of D

18/12

For Secretary to Govt.

General Dept.

To

The Registrar, Chief Court of Meysore with C.L. No. J 22088/20.12.1916

Secretary, Judicial Conference.

Copy to the Press Room.